

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

One Judiciary Square
441 4th Street, NW
Washington, DC 20001

Appeal by Carol Howell

BZA Appeal No. 20782

MOTION TO DISMISS APPEAL AS MOOT

Respondent, the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”), through its undersigned counsel, files this Motion to Dismiss Carol Howell’s (“Ms. Howell”) Appeal as Moot, and in support states as follows:

A. Background

Ms. Howell challenges the Zoning Administrator’s decision to grant a request for a minor deviation related to Building Permit No.: B2011821 (“Building Permit”) and proposed construction at 316 2nd Street, SE (“Property”). The subject minor deviation was granted under 11 DCMR §A-304.2 et. seq.

The purpose of the proposed construction at the Property was to expand the second floor, add a roof deck with pergola over the existing first floor, and expand the third floor over the second floor. The owners requested that the Zoning Administrator grant a minor deviation because the proposed addition would cause the Property’s lot occupancy to exceed the 60% maximum lot occupancy in the RF-3 zone in which the property sits. The Property’s owner believed that the total lot occupancy with the proposed addition would have been greater than 60% but less than 62% (“Minor Deviation”). The applicable regulation, 11 DCMR §A-304.2(a), states:

304.2 The Zoning Administrator is authorized to permit the following deviations from the Zoning Regulations for building permits that are not otherwise authorized by an approved order of

the Zoning Commission or the Board of Zoning Adjustment, if the Zoning Administrator, pursuant to Subtitle A § 304.3, determines that the deviation or deviations will not impair the purpose of the otherwise applicable regulations:

- (a) Deviations not to exceed two percent (2%) of the area requirements governing minimum lot area, maximum percentage of lot occupancy, and area standards of courts.

The Zoning Administrator (based on the information presented by the Property owners at the time the Minor Deviation was requested) approved the Minor Deviation and determined that it would not impair the purpose of the otherwise applicable regulations outlined in 11 DCMR §A-304.3. **See Ex. A (Email from Zoning Administrator approving proposed minor deviation).**

Ms. Howell appeals the Zoning Administrator's August 9, 2021 decision granting the requested Minor Deviation.

B. Ms. Howell's Appeal is Moot and Should be Dismissed

Ms. Howell's appeal is moot and should be dismissed for three (3) reasons. First, the granted Minor Deviation is revoked. Second, the Building Permit has expired and a requested extension of the Building Permit has been denied. Third, the Property Owner is no longer seeking the Minor Deviation at issue.

1. Revocation of the Minor Deviation Determination

DCRA reviewed Ms. Howell's expert reports and associated information in detail in preparation of its response to her appeal. DCRA has determined that the requested additional lot occupancy would result in a lot occupancy in excess of the permissible 62% that falls within the Zoning Administrator's discretion to grant a minor deviation pursuant to 11 DCMR §A-304.2(a). As a result, the previously granted minor deviation is revoked.

2. The Building Permit at Issue is Expired and a Requested Extension Has Been Denied

The Building Permit was issued on January 25, 2021. It expired on January 25, 2022. The Property's owners/representatives sought an extension of the Building Permit. The requested extension was denied on August 8, 2022. **See Exhibit B.** The Building Permit necessary to perform the construction at issue has expired. Construction has not been performed at the Property related to the Building Permit and Minor Deviation, nor can it be.

3. The 316 2nd Street, SE Owners Are No Longer Seeking the Requested Minor Deviation

The Property owners, through their counsel, have informed DCRA that they are no longer seeking the requested Minor Deviation. The Property owners are filing, concurrent with the instant Motion, their own Motion to Dismiss confirming their position. Regardless, future deviation requests by the Property owners under 11 DCMR §A-304.2 et. seq. would need to be resubmitted with new/modified plans and associated documents since the subject deviation decision is revoked and the Building Permit expired.

C. Conclusion

If the appeal presents solely issues of law and there are no adjudicative facts material to the BZA's ruling, an evidentiary hearing is not required. *Chiapella v. D.C. Board of Zoning Adjustment*, 954 A.2d 996, 1002 (D.C. 2008). Here, there are neither facts nor issues of law remaining to be decided. Conducting an evidentiary hearing would not serve a purpose, and it would be waste of government resources. Ms. Howell's appeal of the Zoning Administrator's minor deviation grant is now moot and should be dismissed.

For the aforementioned reasons, DCRA prays that the Board dismiss the Appeal as moot.

Respectfully submitted,

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AMENDED CERTIFICATE OF SERVICE

I certify that on September 14, 2022 a copy of the foregoing was sent via electronic mail to:

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